

the upcoming period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under this § 216.106 and § 216.178 indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from the HRC or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§ 216.175(q)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§ 216.175(d))).

(4) Results from specific stranding investigations (either from the HRC Study Area or other locations, and involving coincident MFAS/HFAS or explosives training or not involving coincident use).

(5) Results from the Long Term Prospective Study. (6) Results from general marine mammal and sound re-

search (funded by the Navy (or otherwise)).

[74 FR 6242, Feb. 6, 2009, as amended at 77 FR 4921, Feb. 1, 2012]

§ 216.179 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.177 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.178, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.172(c), a Letter of Authorization issued pursuant to §§ 216.106 and 216.177 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subparts Q–U [Reserved]

Subpart V—Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Active Sonar Training (AFAST)

SOURCE: 74 FR 4876, Jan. 27, 2009, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 4876, Jan. 27, 2009, subpart V was added, effective Jan. 22, 2009 through Jan. 22, 2014.

§ 216.240 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the activities described in paragraph (c) of this section.

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(b) The taking of marine mammals by the Navy is only authorized if it occurs within the AFAST Study Area, which extends east from the Atlantic Coast of the U.S. to 45° W. long. and south from the Atlantic and Gulf of Mexico Coasts to approximately 23° N. lat., excluding the Bahamas (see Figure 1–1 in the Navy's Application).

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the use of the following mid-frequency active sonar (MFAS) sources, high frequency active sonar (HFAS) sources, explosive sonobuoys, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

(1) AN/SQS-53 (hull-mounted sonar)—up to 16070 hours over the course of 5 years (an average of 3214 hours per year).

(2) AN/SQS-56 (hull-mounted sonar)—up to 8420 hours over the course of 5 years (an average of 1684 hours per year).

(3) AN/SQS-56 or 53 (hull mounted sonar in object detection mode)—up to 1080 hours over the course of 5 years (an average of 216 hours per year).

(4) AN/BQQ-10 or 5 (submarine sonar)—up to 49880 pings over the course of 5 years (an average of 9976 pings per year) (an average of 1 ping per two hours during training events, 60 pings per hour for maintenance).

(5) AN/AQS-22 or 13 (helicopter dipping sonar)—up to 14760 dips over the course of 5 years (an average of 2952 dips per year—10 pings per five-minute dip).

(6) SSQ-62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 29265 sonobuoys over the course of 5 years (an average of 5853 sonobuoys per year).

(7) MK-48 (heavyweight torpedoes)—up to 160 torpedoes over the course of 5 years (an average of 32 torpedoes per year).

(8) MK-46 or 54 (lightweight torpedoes)—up to 120 torpedoes over the course of 5 years (an average of 24 torpedoes per year).

(9) AN/SSQ-110A (IEER explosive sonobuoy) and AN/SSQ-125 (AEER sonar sonobuoy)—up to 4360 sonobuoys, between these 2 sources, over the course

of 5 years (an average of 872 buoys per year).

(10) AN/SQQ-32 (over the side mine-hunting sonar)—up to 22370 hours over the course of 5 years (an average of 4474 hours per year).

(11) AN/SLQ-25 (NIXIE—towed countermeasure)—up to 1660 hours over the course of 5 years (an average of 332 hours per year).

(12) AN/BQS-15 (submarine navigation)—up to 2250 hours over the course of 5 years (an average of 450 hours per year).

(13) MK-1 or 2 or 3 or 4 (Submarine-fired Acoustic Device Countermeasure (ADC))—up to 1125 ADCs over the course of 5 years (an average of 225 ADCs per year).

(14) Noise Acoustic Emitters (NAE—Sub-fired countermeasure)—up to 635 NAEs over the course of 5 years (an average of 127 NAEs per year).

(d) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in §216.240(c) should the amounts (*e.g.*, hours, dips, or number of exercises) vary from those estimated in §216.240(c), provided that the variation does not result in exceeding the amount of take indicated in §216.242(c).

[74 FR 4876, Jan. 27, 2009, as amended at 76 FR 6701, Feb. 8, 2011; 77 FR 4921, Feb. 1, 2012]

§216.241 Effective dates and definitions.

(a) Amended regulations are effective from February 1, 2012, through January 22, 2014.

(i) Two or more individuals of any cetacean species (not including mother/calf pairs), unless of species of concern listed in §216.241(b)(1)(ii) found dead or live on shore within a 2-day period and occurring within 30 miles of one another.

(ii) A single individual or mother/calf pair of any of the following marine mammals of concern: beaked whale of any species, dwarf or pygmy sperm whales, melon-headed whales, pilot whales, right whales, humpback whales, sperm whales, blue whales, fin whales, or sei whales.

(iii) A group of 2 or more cetaceans of any species exhibiting indicators of distress as defined in §216.241(b)(3).